RECENT DECISIONS.

BILLS AND NOTES—CHECKS—PAYMENT THROUGH CLEARING HOUSE.—A drew a check upon the defendant, payable to the plaintiff who was not a member of the clearing house. The plaintiff's correspondent presented it to the defendant for payment through the clearing house. It was included in the clearing house balance struck between the correspondent and the defendant. Before verifying the check, the defendant made a tentative entry in its balance ledger. Upon notice to stop payment, the defendant bank returned the check to the correspondent who refunded it in accordance with the clearing house rules. *Held,* since the evidence did not show an unequivocal intention to pay the check, the case should be remanded for a new trial to ascertain whether there was further evidence of such intention. *First Nat'l. Bank* v. *National Park Bank.* (App. Div. 1st Dept. 1917) 168 N. Y. Supp. 422.

The adjustment of a clearing house balance, as between the members, is only provisional payment of the checks included therein, *Hentz* v. *National City Bank* (1913) 159 App. Div. 743, 144 N. Y. Supp. 979; *Columbia-Knickerbocker Trust Co.* v. *Miller* (1915) 215 N. Y. 191, 109 N. E. 179; *Eastman Kodak Co.* v. *National Park Bank* (1916) 231 Fed. 320, since the clearing house rules generally provide for the redemption of such checks within a specified time. This general provision is an outgrowth of the practice not to examine checks until after their receipt from the clearing house. A return of such checks before the expiration of the time limit amounts to a refusal to pay them. Tiffany, Banks & Banking § 47. But since clearing house rules do not affect non-members, *Manufacturers' Nat'l. Bank* v. *Thompson* (1880) 129 Mass. 438, the question in the principal case is, therefore, whether irrespective of clearing house rules the check was paid. When a check is presented to a drawee bank for payment, any unequivocal acts showing an intention to regard it as paid will operate as payment. *Oddie* v. *National City Bank* (1871) 45 N. Y. 735. So marking a check paid, crediting it to the payee or his agent, and charging it to the drawer, *Consolidated Nat'l. Bank* v. *First Nat'l. Bank* (1908) 129 App. Div. 538; aff'd. 199 N. Y. 516, 92 N. E. 1081, or crediting the payee with the amount upon a deposit slip, *Burns* v. *Yocum* (1906) 81 Ark. 127, 98 S. W. 956; *Oddie* v. *National City Bank, supra*; *contra, National Gold Bank* v. *McDonald* (1875) 51 Cal. 64, or charging the drawer and crediting the payee, *American Nat'l. Bank* v. *Miller* (1913) 229 U. S. 517, 33 Sup. Ct. 883, will operate as payment. So it would seem that the principal case was properly remanded for a new trial to ascertain if any final entries showing a clear intention to regard the check as paid were made on the books of the drawee before notice to stop payment was received.

BILLS AND NOTES—FORMAL REQUISITES—DESIGNATION OF A PARTICULAR FUND.—A forged bill of lading attached to the following draft on the defendant, was bought by the plaintiff. "Sixty days after sight pay to the order of ourselves 1464*l*, 9*s*, and charge the same to account of 100 R. S. M. I. bales cotton." In ignorance of the forgery, the defendant accepted and paid the draft. In a former suit to recover the money thus paid out an American court had declared that the

instrument was not a bill of exchange; *Hannay* v. *Guaranty Trust Co.* (C. C. 1911), 187 Fed. 686; but on appeal a new trial was ordered on the ground that the case was to be determined by English law. In the present suit brought to determine the nature of the instrument, it was *held* that New York law governed, and that under that law the instrument was a conditional order of assignment and not a negotiable instrument. *Guaranty Trust Co. of New York* v. *Hannay & Co.* [1918] 1 K. B. 43.

Since the essential characteristic of a negotiable bill or note is certainty in amount, the sum to be paid cannot depend on any contingency. The negotiability of a mercantile instrument is not impaired, however, by a reference therein to a fund out of which the acceptor or holder may reimburse himself, *Union Bank of Bridgewater* v. *Spies* (1911) 151 Iowa 178, 130 N. W. 928; *First Nat'l. Bank of Hutchinson* v. *Leighton* (1906) 74 Kan. 736, 88 Pac. 59, unless the fund is to be the sole source of payment, *Heflin Gold Mining Co.* v. *Hilton* (1899) 124 Ala. 365, 27 So. 301, when, it seems, the order to pay is conditioned either upon the existence of the fund or the amount realized therefrom. *Carlos* v. *Fancourt* (1794) 5 Durn. & E. 482; 1 Daniel, Neg. Inst. (6th ed.) § 50. Thus, it is submitted, the result reached in each case would depend upon the construction of the words used. See *Munger* v. *Shannon* (1874) 61 N. Y. 251. Where the language can be so construed as to show that the order is drawn generally upon the personal credit of the drawer, the designation of a fund will have no effect upon negotiability. *Schmittler* v. *Simon* (1886) 101 N. Y. 554, 5 N. E. 452; 1 Daniel, *op. cit.* § 51. Nor will the additional fact that an instrument representing the collateral fund is attached to the draft, have any effect thereon, *Barker* v. *Sartori* (1911) 66 Wash. 260, 119 Pac. 611; see 18 Columbia Law Rev. 167, unless the draft contains a stipulation that the collateral should be the source of payment. *Allison* v. *Hollembeak* (1908) 138 Iowa 479, 114 N. W. 1059. It has also been held, therefore, that the purchaser of a bill of exchange with a bill of lading attached does not become liable to an acceptor who has paid the bill, for a breach of warranty in regard to such bill of lading. *Tolerton & Stetson Co.* v. *Anglo-Californian Bank* (1901) 112 Iowa 706, 84 N. W. 930; Williston, Sales § 435. The court, however, in the instant case seems to have misinterpreted the American law, relying on cases, *Brill* v. *Tuttle* (1880) 81 N. Y. 454; *Lowery* v. *Steward* (1862) 25 N. Y. 539, which are clearly distinguishable on their facts; but the result reached may perhaps be justified in view of the prior adjudication as to the character of the bill in suit.

CHATTEL MORTGAGES—APPROPRIATION BY MORTGAGEE TO HIS OWN USE.—The defendant mortgaged a horse and mule to the plaintiff with a provision that the defendant should retain possession until default. On default the plaintiff was entitled to take possession, sell, and apply the proceeds to the mortgage debt. The plaintiff took possession of the horse upon default, but appropriated it to his own use. In an action for the mule by the mortgagee, the issue was the amount to be credited on the mortgage debt for the appropriation of the horse. *Held,* the value of the horse at the date of seizure should be credited on the mortgage debt. *Rentz* v. *Crosby* (S. C. 1918) 94 S. E. 1053.

Since in a few jurisdictions, a chattel mortgagee has only a lien, and the mortgagor's title is not divested until foreclosure, a wrongful